

House Engrossed Senate Bill

State of Arizona
Senate
Forty-sixth Legislature
Second Regular Session
2004

CHAPTER 260

SENATE BILL 1275

AN ACT

AMENDING TITLE 44, CHAPTER 9, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 18;
RELATING TO THE PETROLEUM INDUSTRY.

(TEXT OF BILL BEGINS ON NEXT PAGE)



STATE OF ARIZONA

JANET NAPOLITANO
GOVERNOR

OFFICE OF THE GOVERNOR
1700 WEST WASHINGTON STREET, PHOENIX, AZ 85007

MAIN PHONE: 602-542-4331
FACSIMILE: 602-542-7601

May 24, 2004

The Honorable Ken Bennett
Arizona State Senate
1700 West Washington
Phoenix, Arizona 85007

Re: Senate Bill 1275: Confidentiality of petroleum industry information sources

Dear President Bennett:

This weekend, with reservations, I allowed Senate Bill 1275 to pass into law without my signature.

As I indicated in my May 17, 2004 veto message regarding House Bill 2615, which also dealt with obtaining and using information from the petroleum industry, the flow of information about fuel supplies during a crisis is important. Last summer, several companies in the petroleum industry voluntarily provided highly useful aggregate information about petroleum supplies, deliveries and reserves. This information was helpful in letting the public know the extent of the crisis and giving reasonable assurances that it was over. Other companies declined to provide the state with comparable information on the alleged grounds that they considered it confidential and feared it would become public if disclosed to an agency of state government.

Arizona needs laws that ensure that the state gets the information it needs during a supply emergency, without unduly compromising either the competitive positions of companies in the free market or the state's ability to keep consumers properly informed. Although Senate Bill 1275 will eliminate the excuse that some companies gave last summer for refusing to provide certain information, I am concerned that the bill unduly restricts the state's ability to use that information to help consumers.

I have been assured by the bill's sponsor that he will work with my administration to improve the law next session. The state must have the reasonable flexibility it needs to keep the public adequately informed in the event of a fuel supply emergency.

The Honorable Ken Bennett
May 24, 2004
Page Two

In the event of another fuel supply emergency, my administration will take the lawful measures we deem necessary to inform the public about the emergency.

Yours very truly,


Janet Napolitano
Governor

cc: Hon. Jake Flake
Hon. Jay Tibshraeny

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 44, chapter 9, Arizona Revised Statutes, is amended
3 by adding article 18, to read:

4 ARTICLE 18. CONFIDENTIALITY OF
5 PETROLEUM INDUSTRY INFORMATION

6 44-1374. Confidentiality of petroleum industry information
7 sources; disclosure; supply emergency; definitions

8 A. A GOVERNMENTAL ENTITY SHALL CLASSIFY AS CONFIDENTIAL AND NOT
9 PUBLICLY DISCLOSE ANY DOCUMENTS OR OTHER INFORMATION THAT IS RECEIVED FROM
10 ANY PETROLEUM INDUSTRY RELATED PRIVATE OR PUBLIC SOURCE IF THE PERSON OR
11 ENTITY THAT PROVIDES THE INFORMATION AGREES TO PROVIDE THE INFORMATION ONLY
12 ON THE EXPRESS CONDITION THAT THE INFORMATION REMAIN CONFIDENTIAL.

13 B. IF A GOVERNMENTAL ENTITY RECEIVES A REQUEST TO PUBLICLY DISCLOSE
14 INFORMATION THAT IS CONFIDENTIAL INFORMATION OR FOR ANY OTHER REASON PROPOSES
15 TO PUBLICLY DISCLOSE CONFIDENTIAL INFORMATION, THE GOVERNMENTAL ENTITY SHALL
16 PROVIDE TO THE PERSON OR ENTITY THAT SUBMITTED THE CONFIDENTIAL INFORMATION
17 NOTICE IN WRITING OF THE REQUEST OR PROPOSAL TO DISCLOSE. THE NOTICE SHALL
18 IDENTIFY THE CONFIDENTIAL INFORMATION THAT WOULD BE DISCLOSED AND INDICATE
19 THE FORM IN WHICH THE CONFIDENTIAL INFORMATION WOULD BE PROVIDED. ON RECEIPT
20 OF THE NOTICE, THE PERSON OR ENTITY THAT SUBMITTED THE CONFIDENTIAL
21 INFORMATION HAS FIFTEEN WORKING DAYS IN WHICH TO RESPOND TO THE NOTICE AND
22 TO EITHER WITHDRAW THE REQUEST FOR CONFIDENTIALITY OR JUSTIFY TO THE
23 GOVERNMENTAL ENTITY THE CLAIM OF CONFIDENTIALITY ON EACH SPECIFIC ITEM OF
24 CONFIDENTIAL INFORMATION COVERED BY THE NOTICE.

25 C. THE GOVERNMENTAL ENTITY SHALL CONSIDER THE RESPONSE IN DETERMINING
26 WHETHER TO PUBLICLY DISCLOSE ANY CONFIDENTIAL INFORMATION FOR WHICH A
27 JUSTIFICATION HAS BEEN SUBMITTED. UNLESS THE GOVERNMENTAL ENTITY DETERMINES
28 THAT THERE IS NO TRADE SECRET OR OTHER LEGITIMATE JUSTIFICATION FOR THE
29 CONFIDENTIALITY BEING CLAIMED BY THE RESPONDENT, THE GOVERNMENTAL ENTITY
30 SHALL NOT DISCLOSE ANY CONFIDENTIAL INFORMATION FOR WHICH A JUSTIFICATION HAS
31 BEEN TIMELY SUBMITTED. IF THE GOVERNMENTAL ENTITY DETERMINES THAT THERE IS
32 NO TRADE SECRET OR OTHER LEGITIMATE JUSTIFICATION FOR ALL OR A PORTION OF THE
33 CONFIDENTIALITY CLAIM, THE GOVERNMENTAL ENTITY SHALL ISSUE A WRITTEN DECISION
34 THAT SETS FORTH THE REASONS FOR MAKING THAT DETERMINATION. THE GOVERNMENTAL
35 ENTITY SHALL DELIVER A COPY OF THE DECISION TO THE PERSON OR ENTITY
36 SUBMITTING THE CONFIDENTIAL INFORMATION AND THE PERSON REQUESTING PUBLIC
37 DISCLOSURE OF THE CONFIDENTIAL INFORMATION.

38 D. NOTWITHSTANDING A DETERMINATION THAT THERE IS NO LEGITIMATE
39 JUSTIFICATION FOR A CLAIM OF CONFIDENTIALITY, AND TO ALLOW THE PERSON OR
40 ENTITY THAT SUBMITTED THE CONFIDENTIAL INFORMATION TO SEEK DIRECT JUDICIAL
41 INTERVENTION TO PREVENT ITS RELEASE, THE GOVERNMENTAL ENTITY SHALL NOT
42 PUBLICLY DISCLOSE CONFIDENTIAL INFORMATION SUBMITTED TO THE GOVERNMENTAL
43 ENTITY PURSUANT TO THIS SECTION FOR AT LEAST FIFTEEN WORKING DAYS AFTER THE
44 DATE ON WHICH THE GOVERNMENTAL ENTITY HAS ISSUED AND DISCLOSED THE WRITTEN
45 DETERMINATION PURSUANT TO THIS SECTION.

1 E. IF ANY LEGAL OR ADMINISTRATIVE ACTION IS FILED WITH ANY COURT OR
2 OTHER AGENCY SEEKING TO FORCE DISCLOSURE OF ANY CONFIDENTIAL INFORMATION, THE
3 GOVERNMENTAL ENTITY, WITHIN FIVE WORKING DAYS OF BEING SERVED WITH THE
4 ACTION, SHALL NOTIFY IN WRITING THE PERSON OR ENTITY THAT SUBMITTED THE
5 CONFIDENTIAL INFORMATION OF THE ACTION TO ALLOW THE PERSON OR ENTITY THAT
6 SUBMITTED THE CONFIDENTIAL INFORMATION TO INTERVENE IN THE ACTION.

7 F. CONFIDENTIAL INFORMATION SHALL NOT BE CLASSIFIED OR MAINTAINED AS
8 CONFIDENTIAL IF THE GOVERNMENTAL ENTITY DETERMINES THAT THE CONFIDENTIAL
9 INFORMATION HAS ALREADY BEEN MADE PUBLIC BY THE SUBMITTING PERSON OR ENTITY
10 AND ADVISES, IN WRITING, THE PERSON OR ENTITY THAT SUBMITTED THE CONFIDENTIAL
11 INFORMATION OF THIS DETERMINATION. NOTWITHSTANDING A DETERMINATION THAT THE
12 CONFIDENTIAL INFORMATION HAS ALREADY BEEN MADE PUBLIC BY THE SUBMITTING
13 PERSON OR ENTITY, THE GOVERNMENTAL ENTITY SHALL NOT PUBLICLY DISCLOSE THE
14 CONFIDENTIAL INFORMATION FOR AT LEAST FIVE WORKING DAYS AFTER THE
15 GOVERNMENTAL ENTITY HAS ADVISED THE SUBMITTING PERSON OR ENTITY TO ALLOW THE
16 PERSON OR ENTITY THAT SUBMITTED THE CONFIDENTIAL INFORMATION TO SEEK DIRECT
17 JUDICIAL INTERVENTION TO PREVENT ITS RELEASE.

18 G. THIS SECTION PROTECTS PETROLEUM INDUSTRY RELATED CONFIDENTIAL
19 INFORMATION SUBMITTED TO A GOVERNMENTAL ENTITY BUT DOES NOT IMPOSE ANY
20 REQUIREMENT THAT INFORMATION OF ANY TYPE FROM ANY SOURCE BE SUBMITTED TO ANY
21 GOVERNMENTAL ENTITY.

22 H. IF THERE IS A STATEWIDE OR REGIONAL SHORTAGE OR THREATENED SHORTAGE
23 OF A PRODUCT OR SERVICE THAT IS ESSENTIAL TO THE HEALTH, SAFETY AND WELFARE
24 OF THE PEOPLE OF THIS STATE DUE TO AN ABNORMAL MARKET DISRUPTION RESULTING
25 FROM ANY NATURAL DISASTER, WEATHER CONDITION, ACT OF NATURE, STRIKE, CIVIL
26 DISORDER, WAR, NATIONAL OR LOCAL EMERGENCY OR OTHER EXTRAORDINARY ADVERSE
27 CIRCUMSTANCE, THE GOVERNOR MAY PROCLAIM THAT A SUPPLY EMERGENCY EXISTS. IF
28 A SUPPLY EMERGENCY IS DECLARED PURSUANT TO THIS SUBSECTION AND A MAJORITY OF
29 THE PERSONS OR ENTITIES THAT ARE THE SUBJECT OF THE SUPPLY EMERGENCY HAS
30 PROVIDED INFORMATION TO THE GOVERNMENTAL ENTITY, THE GOVERNMENTAL ENTITY MAY
31 ONLY DISCLOSE THE UNATTRIBUTABLE AGGREGATED TOTAL OF ALL SOURCES OF
32 CONFIDENTIAL INFORMATION.

33 I. FOR THE PURPOSES OF THIS SECTION:

34 1. "CONFIDENTIAL INFORMATION" MEANS ALL OF THE FOLLOWING:

35 (a) THE INFORMATION IS NOT AND HAS NOT BEEN REASONABLY OBTAINABLE BY
36 LEGITIMATE MEANS BY OTHER PERSONS WITHOUT THE CONSENT OF THE PERSON PROVIDING
37 THE INFORMATION, OTHER THAN BY GOVERNMENTAL ENTITIES AND OTHER THAN IN
38 DISCOVERY BASED ON A SHOWING OF A SPECIAL NEED IN A JUDICIAL OR
39 QUASI-JUDICIAL PROCEEDING.

40 (b) A STATUTE DOES NOT SPECIFICALLY REQUIRE DISCLOSURE OF THE
41 INFORMATION TO THE PUBLIC.

42 (c) THE PERSON HAS SATISFACTORILY SHOWN THAT DISCLOSING THE
43 INFORMATION IS LIKELY TO CAUSE SUBSTANTIAL HARM TO THE COMPETITIVE POSITION
44 OF THE PERSON PROVIDING THE INFORMATION.

1 2. "GOVERNMENTAL ENTITY" MEANS AN AGENCY, BOARD, DEPARTMENT OR
2 COMMISSION OF THIS STATE, THE STATE LEGISLATURE AND ALL AGENCIES OR
3 COMMITTEES OF THE STATE LEGISLATURE BUT DOES NOT INCLUDE THE COURTS OF THIS
4 STATE.

5 3. "PUBLICLY DISCLOSE" MEANS TO REVEAL THE CONTENTS OF INFORMATION
6 THAT HAS BEEN CLASSIFIED AS CONFIDENTIAL TO ANY THIRD PERSON OR ENTITY THAT
7 IS NOT BOUND BY THIS SECTION.

THIS BILL HAVING REMAINED WITH THE GOVERNOR FIVE DAYS, SUNDAYS
EXCLUDED, AND THE LEGISLATURE BEING IN SESSION, IT HAS BECOME A
LAW THIS 24, DAY OF MAY 2004.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 24, 2004.

Passed the House May 11, 2004,

by the following vote: 31 Ayes,

19 Nays, 10 Not Voting

Jake Flake
Speaker of the House

Norman L. Fyore
Chief Clerk of the House

Passed the Senate March 8, 2004,

by the following vote: 30 Ayes,

0 Nays, 0 Not Voting

Ken Bennett
President of the Senate

Charmian Ballinger
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

_____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary to the Governor

Approved this _____ day of

_____, 20____,

at _____ o'clock _____ M.

Governor of Arizona

S.B. 1275

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this _____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary of State

SENATE CONCURS IN HOUSE AMENDMENTS
AND FINAL PASSAGE

Passed the Senate May 17, 2004

by the following vote: 26 Ayes,

0 Nays, 4 Not Voting

[Signature]
President of the Senate
[Signature]
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

17th day of May, 2004

at 2:14 o'clock P. M.

[Signature]
Secretary to the Governor

Approved this _____ day of

_____, 20____,

at _____ o'clock _____ M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 24 day of May, 2004

at 2:54 o'clock A. M.

[Signature]
Secretary of State

S.B. 1275